



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 776

H.P. 583

House of Representatives, March 1, 2011

An Act To Create a Fair Process for Energy Service Companies Contracting with Maine Schools

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative RICHARDSON of Carmel.

Cosponsored by Representative: JOHNSON of Greenville, Senator: LANGLEY of Hancock.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §15915, sub-§1**, as amended by PL 2005, c. 499, §1, is
3 further amended to read:

4 **1. Initial agreement.** Any school administrative unit may enter into an agreement of
5 up to 15 years with a private party, such as an energy service or 3rd-party financing
6 company, for the design, installation, operation, maintenance and financing of energy
7 conservation or combined energy conservation and air quality improvements at existing
8 school administrative unit facilities. The school administrative unit's costs to enter into
9 such an agreement are not applicable to the unit's school construction project costs, the
10 debt service on which is eligible for subsidy purposes under section 15907. ~~Such an~~
11 ~~agreement is deemed to be a professional service, which is not subject to the competitive~~
12 ~~bidding requirements of Title 5, section 1743-A, if the agreement:~~

13 ~~A. Provides for operation or maintenance of the improvement for at least 5 years or~~
14 ~~the entire term of the financing agreement if longer than 5 years;~~

15 ~~B. Requires a guaranty by the contractor that the improvement will meet~~
16 ~~performance criteria set forth in the agreement for at least 5 years or for the entire~~
17 ~~term of the financing agreement if longer than 5 years; and~~

18 ~~C. Has a total contract cost, excluding interest and operating and maintenance costs,~~
19 ~~of less than \$2,000,000 for any school building.~~

20 A school administrative unit ~~may shall~~ select contractors for these ~~professional~~ services
21 ~~on the basis of a request for qualifications or a request for proposals and it is not required~~
22 ~~to use using~~ a competitive method set forth in this chapter and Title 5, section 1743-A
23 ~~and Private and Special Law 1999, chapter 79.~~ The selection process must ~~include at a~~
24 ~~minimum a request for qualifications or a request for proposals that is advertised in a~~
25 ~~newspaper of general circulation in the school administrative unit and a newspaper of~~
26 ~~general circulation in the City of Augusta.~~ The school administrative unit shall interview
27 ~~not fewer than 3 service providers unless a smaller number of service providers responds~~
28 ~~to the request for qualifications or requests for proposals ensure that all qualified~~
29 ~~contractors are allowed to compete fairly on the basis of their qualifications.~~ ~~The Unless~~
30 ~~the school administrative unit uses a model contract developed by the Department of~~
31 ~~Administrative and Financial Services, Bureau of General Services, the performance~~
32 ~~criteria in the agreement is subject to approval unit's solicitation for bids and any contract~~
33 ~~for services must be approved by the Department of Administrative and Financial~~
34 ~~Services, Bureau of General Services bureau.~~ A request for qualifications or proposals
35 ~~The school administrative unit may not contain terms that require service providers to~~
36 ~~have more than 3 years of experience in the energy conservation field or the use of~~
37 ~~equipment that is not generally available to service providers or impose other terms that~~
38 ~~are otherwise included for the purpose of bias or favoritism toward a particular service~~
39 ~~provider. Objections to the terms of a request for qualifications or proposals under this~~
40 ~~subsection are deemed waived if not delivered in writing to the office of the~~
41 ~~superintendent of schools in that school administrative unit within 21 days of the last~~
42 ~~publication of the newspaper advertisement~~ By January 1, 2012, the bureau shall adopt by
43 rule a model contract for services under this section that establishes performance criteria

1 and other terms and conditions that are fair, nondiscriminatory and appropriate to meet
2 the purposes of this subsection. Rules adopted by the bureau under this subsection are
3 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4 **SUMMARY**

5 This bill removes provisions of law that allow school administrative units to use a
6 process other than a competitive bid process in selecting energy service providers for the
7 design, installation, operation, maintenance and financing of energy conservation or
8 combined energy conservation and air quality improvements. This bill requires the
9 Department of Administrative and Financial Services, Bureau of General Services to
10 adopt by rule a model contract for these services.